

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VS. CRIMINAL NO. 1:18CR121

AMBROSE DEJUAN NELSON

TRANSCRIPT OF SENTENCING HEARING

BEFORE THE HONORABLE HALIL S. OZERDEN
UNITED STATES DISTRICT JUDGE

MARCH 15, 2019
GULFPORT, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT:

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1
1 **THE COURT:** This is case number 1:18-121, United
2 States versus Ambrose DeJuan Nelson, scheduled for sentencing.
3 Would counsel please make their appearances.

4 **MS. VAN BUSKIRK:** Good morning, Your Honor. Kathlyn
5 Van Buskirk on behalf of the government.

6 **THE COURT:** Good morning.

7 **MR. DAVIS:** Jim Davis, Your Honor. And I'm hear on
8 behalf of Mr. Nelson, and Ross Barnett, Junior, is here with me
9 as co-counsel.

10 **THE COURT:** All right. Good morning, Counsel.

11 **MR. DAVIS:** And Mr. Nelson is present.

12 **THE COURT:** Good morning. Ms. Van Buskirk, pursuant
13 to the Crime Victims' Rights Act, are there any victims of this
14 offense?

15 **MS. VAN BUSKIRK:** No, Your Honor.

16 **THE COURT:** Has the government received the
17 presentence report and any addendum and had a chance to review
18 them?

19 **MS. VAN BUSKIRK:** I did, and there's no objection on
20 behalf of the government.

21 **THE COURT:** All right. Mr. Davis, or Mr. Barnett,
22 either of you, did you receive the presentence report and any
23 addenda and have a chance to review them with your client?

24 **MR. DAVIS:** Yes, sir, Your Honor.

25 **THE COURT:** Were you able to explain it to your

1 client and answer any questions he had about them?

2 **MR. DAVIS:** Yes, Your Honor.

3 **THE COURT:** And did he understand the presentence
4 report and any addendum?

5 **MR. DAVIS:** Yes, Your Honor.

6 **THE COURT:** Are there any objections?

7 **MR. DAVIS:** Yes, Your Honor.

8 **THE COURT:** I know there were some written ones
9 submitted. Why don't you just state very briefly for the
10 record what they are, and then I will see if the government has
11 any evidence or argument to offer.

12 **MR. DAVIS:** Judge, the biggest objection my client
13 has, and he's been emphatic about this to me and Mr. Barnett
14 both, is that he denies any involvement with Mr. Washington or
15 Mr. Taylor, and Mr. Washington and Mr. Taylor's drug
16 transactions. We have pointed out that the discovery and the
17 evidence does have text messaging between him and Washington.
18 Also, there is an alleged -- some wire transfers. And in
19 particular, I believe one from, allegedly, him directly to
20 Mr. Washington, but with knowledge of that, our client is still
21 emphatic that he denies any contact whatsoever with Washington
22 and Taylor.

23 **THE COURT:** All right.

24 **MR. DAVIS:** And, of course, with that, that would
25 make him not involved with, of course, the large amount of

1 methamphetamine that Taylor and Washington were involved in.

2 Also, the firearm. The firearm -- I believe the
3 firearm that they're alleging in the presentence report is a
4 firearm that was a .45 caliber Glock, I believe, that was found
5 in Taylor's apartment. My client emphatically says -- of
6 course, since he is denying everything with Taylor, he knows
7 nothing about that pistol, that gun. And that is a little
8 far-reaching when they always -- when they find one on a
9 codefendant and they don't actually find any guns on the
10 individual defendant, that that enhancement applies against
11 him.

12 Also, I made an objection in the presentence report,
13 and I hope the Court kind of grasps what this one is.
14 Methamphetamine that is pure, the defendant -- when they look
15 at the sentencing guidelines, it's kind of enhanced because if
16 you have ice, or allege ice is what they have, of course the
17 guidelines is a lot higher than if it's just regular
18 methamphetamine.

19 **THE COURT:** Right.

20 **MR. DAVIS:** And so that same theory, the purity or,
21 you know, of the particular narcotic or ice, is used to claim
22 it had to be imported, so he gets another two-level
23 enhancement. As in the presentence report, I believe it was
24 paragraph -- I didn't write down the number, but the Court is
25 aware he did get a two-level enhancement for that.

1 **THE COURT:** Yes.

2 **MR. DAVIS:** So is that -- I think that's kind of a
3 theory of double counting for the same wrongdoing. Having this
4 pure narcotic, you get a higher level, and then you turn around
5 and now they're claiming since it's a pure narcotic you get a
6 two-level enhancement. It's kind of like they're double
7 hitting you twice in the guidelines for the same bad act. And
8 I just have an objection for that reason.

9 **THE COURT:** Well, I understand that may be a
10 philosophical objection, but that's the guidelines. That's the
11 way they're written, so...

12 **MR. DAVIS:** I'm just saying that --

13 **THE COURT:** I understand.

14 **MR. DAVIS:** -- understand, that's one objection I've
15 kind of developed in my own mind. For a long time I said
16 there's no way they can claim all this stuff is found, and that
17 none of it is being manufactured in the United States. But
18 since I've lost that motion about three or four times, and the
19 government's agents, they finally have convinced me that it
20 must be coming from outside the country, but I still think this
21 is -- I still think they kind of find of philosophically, as
22 you say, Your Honor, they are kind of double counting for the
23 same wrongful act.

24 And then, again, on the leader and organizer, that
25 relies heavily on Washington's statements about this young man,

1 which, again, Mr. Nelson adamantly denies. And I think that
2 kind of goes through the basis of all our objections, Your
3 Honor.

4 **THE COURT:** Well, let me inquire, does the government
5 have any evidence to offer on the objections?

6 **MS. VAN BUSKIRK:** Yes, Your Honor. The government
7 would call Agent Will Anderson.

8 **THE COURT:** All right. Agent Anderson, come forward,
9 please. If you would, sir, place your left hand on the Bible,
10 raise your right hand, and take the oath here.

11 || WILL ANDERSON,

12 having first been duly sworn, testified as follows:

13 **THE COURT:** Sir, please have a seat in the witness
14 box. You'll see the microphone there in front of you. I need
15 you to speak slowly so the court reporter can type down
16 everything you're saying. She can't type two people talking at
17 once, so you have to let the lawyers finish talking before you
18 start answering. And you must verbalize all answers yes or no.
19 She can't type a shake or nod of the head or an uh-huh or
20 nuh-uh. Do you understand that, Sir?

22 **THE COURT:** You may begin, Counsel.

23 MS. VAN BUSKIRK: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. VAN BUSKIRK:

1 Q. Agent Anderson, were you the investigator in a case
2 involving Mr. Tharon Taylor, a Mr. Washington, along with
3 Ambrose DeJuan Nelson?

4 A. Yes, I was.

5 Q. And during your investigation, did you get the cooperation
6 of Mr. Washington?

7 A. That is correct.

8 Q. And what did you learn during your cooperation of
9 Mr. Washington?

10 A. Through Mr. Washington's cooperation, early on in the
11 investigation, he identified his source of supply as Ambrose
12 DeJuan Nelson. He stated Mr. Nelson was his cousin, and that
13 Nelson had contacted him to transport methamphetamine from
14 Nelson to Mr. Tharon Jamell Taylor in Pascagoula.

15 Q. Was there a relationship between these individuals and
16 Mr. Tharon Taylor?

17 A. Yes, they were loosely related. I believe Mr. Washington
18 identified Taylor as his step-dad's nephew.

19 Q. When did this occur?

20 A. In the summer of 2017. Approximately, between June and
21 August.

22 Q. And how many trips did Mr. Washington state that he took
23 from Texas to Mississippi?

24 A. Mr. Washington stated he took seven or eight trips, which
25 at least seven of those were substantiated by LPR data.

1 Q. And did he ever bring the proceeds of those narcotics back
2 to Mr. Nelson?

3 A. Yes.

4 Q. And did he state anything about Mr. Nelson's involvement
5 with coming to Mississippi to deliver narcotics?

6 A. Yes. Mr. Washington stated in an interview that if he was
7 unable to transport the narcotics or the currency for
8 Mr. Nelson, that Nelson would make the trip himself.

9 Q. And were you able to talk to Mr. Washington about Mr.
10 Nelson's physical location in Dallas, Texas?

11 A. Yes, I was. When we began to discuss Mr. Nelson and try
12 to positively identify him, he described the portion of town of
13 where Mr. Nelson's apartment was located. I then showed him,
14 utilizing Google Maps, the apartment complex, and he positively
15 identified the apartment complex.

16 Q. And was he -- what information did he state he ever saw at
17 the apartment complex involving narcotics transactions?

18 A. He stated one time that during one of the trips when he
19 was actually supposed to pick up the narcotics, that Mr. Nelson
20 did not have possession of the narcotics yet. And he and
21 Washington waited, and I'm not sure if it's the same apartment
22 complex as Mr. Nelson resided or not, but they waited in the
23 parking lot of the apartment complex where Mr. Nelson met with
24 a Hispanic male and provided him approximately \$3,000 in cash
25 for an unidentified amount of methamphetamine.

1 Q. During your debriefing with Mr. Washington, did he have
2 any information regarding MoneyGram?

3 A. Yes. Mr. Washington stated that Mr. Taylor would pay
4 Nelson for partial payments, or "fronts" as they're sometimes
5 called, for the narcotics through Wal-Mart MoneyGram.

6 Mr. Washington also stated he sometimes received payment for
7 his courier services through Wal-Mart MoneyGram.

8 Q. And what did you do with this information upon learning
9 about MoneyGram?

10 A. I subpoenaed Wal-Mart MoneyGram, the actual service. I
11 believe it's actually MoneyGram, separate from Wal-Mart. But
12 anyway, I subpoenaed their records for Mr. Nelson during that
13 time period and was able to substantiate Mr. Washington's claim
14 that he was receiving transactions from Mr. Nelson. And,
15 specifically, I asked him about a transaction on June 28, 2017,
16 wherein MoneyGram's records showed that Mr. Nelson paid \$1,000
17 to Washington, and Mr. Washington stated that that payment was
18 for his courier services for transporting methamphetamine.

19 Q. In any of the documents that you received from your
20 subpoena, did it show that Mr. Nelson, in fact, used his
21 driver's license while using MoneyGram?

22 A. Yes.

23 Q. And that was a copy of his driver's license?

24 A. It wasn't a photographic copy, but it listed all the
25 information that was listed on his driver's license, such as

1 the license number, the address, and things of that nature.

2 Q. What about any females, were any females found to be on
3 MoneyGram depositing money for Mr. Nelson?

4 A. Mr. Washington stated that Taylor, Mr. Taylor did not send
5 the payments to Mr. Nelson directly, that he would use females,
6 mostly female family members to send the money back. That
7 information was corroborated, as several of Mr. Taylor's
8 relatives were found to be sending money to Mr. Nelson via the
9 same Wal-Mart MoneyGram service.

10 Q. Based on your subpoenaed information, how many females
11 were you able to identify sending money back to Mr. Nelson?

12 A. Approximately four or five.

13 Q. Okay. And Mr. Washington told you there was more than one
14 individual female sending money back for the narcotics?

15 A. That's correct.

16 Q. Okay. And during your investigation, did you ever seize
17 any cell phones from Mr. Washington and Mr. Taylor?

18 A. Yes.

19 Q. And what is of significance involving Mr. Nelson and those
20 cell phones?

21 A. Mr. Washington gave consent, written consent for us to
22 search his cell phone. During the search of his cell phone, he
23 had a contact listed under the name "Cuz," which he advised me
24 was an known alias of Mr. Nelson. Mr. Taylor also had six
25 phones on his person during his arrest. And one of those

1 phones was the same phone number Mr. Washington gave for Mr.
2 Nelson, and it was also, I believe, saved under the name "Cuz."

3 Mr. Washington had several text messages between him
4 and that phone number. One of them was shortly after his
5 arrest stating, Cuz, I just shook free on an aggravated
6 trafficking charge, we can't talk on the phone, they went
7 through it, got everything, bro, move around, don't sit still.
8 He explained that to me as he was warning his cousin that he
9 had just been arrested.

10 Q. Did you try to subpoena the subscriber information on that
11 phone?

12 A. Yes, I did.

13 Q. And were you able to make any determination that that was
14 Mr. Nelson's phone?

15 A. I was not. There was no subscriber information listed for
16 that phone number.

17 Q. And during your investigation, did you learn about Mr.
18 Nelson being shot at some point?

19 A. Yes. Mr. Washington stated that at some point in 2016 or
20 '17, Mr. Nelson owed approximately \$30,000 to an unknown
21 Mexican supplier in Texas. And he met with that unknown
22 supplier in West Texas where he was shot, left for dead, and
23 his vehicle was supposedly burned.

24 Q. And were you able to see any of these possible wounds that
25 he received from the shooting during your investigation?

1 A. Yes. When Mr. Nelson was arrested, he had several scars
2 on his -- I believe it's his left arm. I tried to ask him what
3 it was from, and he refused to elaborate.

4 Q. Did you have an opportunity to talk to Mr. Nelson's parole
5 officer in Texas?

6 A. I did.

7 Q. And what did you learn from that conversation?

8 A. Shortly after Mr. Nelson's arrest, and actually during the
9 early investigation into Washington and Taylor, I learned that
10 Mr. Nelson had absconded his probation, and at the time I had
11 originally contacted his probation officer had an NCIC want for
12 a probation violation.

13 Q. And the methamphetamine that was seized during the stop of
14 Mr. Washington, was that sent to a crime lab?

15 A. It was.

16 Q. And what was the results of that crime lab?

17 A. It was sent to the DEA Crime Lab, and they approximate
18 that it was 100 percent pure.

19 Q. And are you aware of any super labs in the United States
20 that are able to make that purity of methamphetamine?

21 A. Not to my knowledge.

22 Q. And going back to the search of Mr. Tharon Taylor's
23 apartment, what was located in that apartment?

24 A. Scales, various cutting agents, and a firearm.

25 Q. And is that the same apartment in which Mr. Washington was

1 supposed to deliver the methamphetamine for Mr. Nelson?

2 A. That's correct.

3 **MS. VAN BUSKIRK:** One moment, Your Honor.

4 **THE COURT:** Yes.

5 **MS. VAN BUSKIRK:** Government tenders, Your Honor.

6 **THE COURT:** All right. Cross-examination?

7 **MR. DAVIS:** Yes, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. DAVIS:

10 Q. Mr. Anderson, you indicate that Washington claimed he went
11 to Texas on numerous occasions?

12 A. Mr. Washington stated he was from Texas. He lived in the
13 Dallas area.

14 Q. Do you have any other witnesses that corroborate
15 Mr. Washington's story about him having contact with Mr. Nelson
16 in the State of Texas?

17 A. No, sir.

18 Q. Do you have any type of gas receipts, hotel bills,
19 anything that corroborate Mr. Washington's story of his
20 activities in the State of Texas?

21 A. No, sir.

22 Q. And in fact, Mr. Taylor, did y'all take a statement from
23 Mr. Taylor?

24 A. Mr. Taylor did not cooperate.

25 Q. And so he did not corroborate Mr. Washington's allegations

1 either; is that correct?

2 A. That's correct.

3 Q. So it's basically Mr. Washington's story standing by
4 itself?

5 A. Several of his statements were corroborated.

6 Q. Well, you also indicate that there were some women that
7 allegedly put some money in the mail to Mr. -- or wired some
8 money to Mr. Nelson; is that correct?

9 A. Yes, sir.

10 Q. But who is telling them to wire that money to Mr. Nelson?

11 A. I'm unaware, sir.

12 Q. Was it Mr. Taylor? I think that's where the money was
13 allegedly coming from; is that correct?

14 A. Allegedly.

15 Q. And so if there's any wired money, that would be under
16 Mr. Taylor's directions and orders; is that correct?

17 A. Yes, sir.

18 Q. And -- okay.

19 Court's indulgence.

20 **THE COURT:** Yes.

21 BY MR. DAVIS:

22 Q. You indicate that there was a gun found in Mr. Taylor's
23 apartment; is that correct?

24 A. Yes, sir.

25 Q. And where was that gun found?

1 A. I believe it was in the first bedroom to the left.

2 Q. But as far as that gun goes, you have nothing whatsoever
3 that connects that gun directly to Mr. Nelson, do you?

4 A. No, sir.

5 Q. And Taylor didn't give you a statement or anything about
6 the gun, did he?

7 A. No, sir.

8 Q. And you have no proof of Mr. Taylor using this particular
9 gun in drug transactions?

10 A. No, sir.

11 **MR. DAVIS:** Nothing further, Your Honor.

12 **THE COURT:** All right. Any redirect?

13 **MS. VAN BUSKIRK:** No, Your Honor.

14 **THE COURT:** Agent Anderson, you may step down. Thank
15 you for your time.

16 Does the government have any other evidence to offer?

17 **MS. VAN BUSKIRK:** No, Your Honor. The government
18 rests.

19 **THE COURT:** Mr. Davis, any evidence on behalf of the
20 defendant?

21 **MR. DAVIS:** Probably not, Your Honor, but can I talk
22 to my client for one second?

23 **THE COURT:** Sure, go ahead.

24 **MR. DAVIS:** Judge, we rest.

25 **THE COURT:** All right.

1 **MR. BARNETT:** I'd like for him to say that he doesn't
2 care to testify.

3 || MR. DAVIS: Oh, okay.

4 **MR. BARNETT:** Your Honor, we'd like to be on the
5 record with our client that he does not choose to testify.

6 **THE COURT:** All right. Mr. Nelson, raise your right
7 hand and take the oath, sir.

8 (Oath Administered)

9 **THE COURT:** Mr. Nelson, have you conferred with your
10 attorneys about whether or not to testify at this hearing?

11 **DEFENDANT:** Yes, I have.

12 **THE COURT:** And were you able to ask your attorneys
13 any questions you may have had about that subject?

14 **DEFENDANT:** Yes, I was.

15 **THE COURT:** Did you understand their answers?

16 **DEFENDANT:** Yes, I did.

17 **THE COURT:** Do you understand that you do have a
18 right to testify at this hearing if you wish to do so, do you
19 understand that?

20 || **DEFENDANT:** Yes, I do.

21 **THE COURT:** Of course, if you do do that, then you're
22 going to be subject to cross-examination by the government, you
23 understand that?

DEFENDANT: Yes, sir.

THE COURT: But you do not have to testify, it's

1 entirely up to you, do you understand that?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** Do you understand your right to testify?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** And are you telling me it is your own
6 personal knowing, intelligent and voluntary decision not to
7 testify in this case?

8 **DEFENDANT:** Yes, it is.

9 **THE COURT:** It's not something your attorneys talked
10 you into, or threatened you with, or forced you not to do?

11 **DEFENDANT:** I choose not to, Your Honor.

12 **THE COURT:** Thank you. You may be seated.

13 Let me hear, then, any argument, if there's no
14 further evidence, any argument on behalf of the government.

15 **MS. VAN BUSKIRK:** Your Honor, the government would
16 just show that the addendum -- we would rely on the information
17 provided by the probation officer's comments as to each of the
18 objections. The government feels that Mr. Nelson should be
19 held accountable for his actions involving the conspiracy
20 involving Mr. Washington and Mr. Taylor. The government has
21 shown by a preponderance of the evidence, Your Honor, that he
22 was involved. We have Mr. Washington's statements that have
23 only been corroborated, and nothing shown that Mr. Washington
24 was lying to the government during his debriefing. He provided
25 information that he was traveling on several occasions from

1 Texas to Mississippi with narcotics on behalf of Mr. Nelson to
2 deliver to Mr. Taylor. He was also able -- Agent Anderson was
3 also able to corroborate that not only was Mr. Washington only
4 delivering it, but there was also text messages in his phone
5 with the number that was also in the phone of Mr. Tharon
6 Taylor. And then he was able to further corroborate the
7 MoneyGrams, money being used and sent from Mr. Nelson to
8 Mr. Washington at one point, along with several females, in
9 which you heard there was at least more than two females
10 involved in sending money back to Mr. Nelson.

11 As to the amount, I feel that he should be held
12 accountable for all of the methamphetamine delivered by
13 Mr. Washington. He never said that it was any other individual
14 but Mr. Nelson who was the source of supply for the
15 methamphetamine he was bringing for Mr. Taylor.

16 As to the gun enhancement, Your Honor, this was
17 obviously foreseeable, I believe, from Mr. Nelson's point of
18 view, that the individual, Mr. Taylor, would have a gun in
19 connection with this large amount of methamphetamine that he
20 has been delivered to his house. I believe it's foreseeable
21 from Mr. Nelson's point of view.

22 As to the offense level involving the
23 methamphetamine, you heard the crime lab submission, it was
24 100 percent pure methamphetamine, and according to Agent
25 Anderson, that he is not aware of any super labs that are able

1 to produce in the United States this amount of methamphetamine
2 at this purity. And therefore, we know that it did come from
3 Mexico, along with all of the connections that Mr. Nelson had
4 with individuals in Texas, it just seems to -- from the
5 testimony of Agent Anderson, that there's cartel dealings with
6 Nelson and individuals who were providing him the narcotics.

7 As to the role enhancement, Your Honor, as to the
8 four-level enhancement, I believe the government has shown that
9 there are five or more individuals involved in this, and we
10 only have to show Mr. Nelson was directing one individual,
11 which would be Mr. Washington, to go back and forth, deliver
12 the narcotics, bring the money back and forth on occasions.
13 But the government would show that Mr. Nelson was one of those
14 members, Mr. Washington, Mr. Taylor. And then we have the two
15 females, two or more females that we know involved in the
16 MoneyGram transactions.

17 So therefore, I believe the four-point enhancement is
18 justified, Your Honor.

19 **THE COURT:** All right.

20 **MS. VAN BUSKIRK:** Thank you.

21 **THE COURT:** Mr. Davis, any argument?

22 **MR. DAVIS:** Yes, sir, I'll be real brief. As far as
23 -- I'll start at the end with the leadership role. It sounds
24 like if anybody is a leader, Mr. Taylor is. And he's the one
25 directing and controlling women running and depositing money

1 for him and everything else. It doesn't sound like Mr. Nelson
2 is a leader or supervisor at all. So I don't think that
3 four-point enhancement possibly would apply to this individual.

4 And then the gun, it was found in Taylor's apartment,
5 but there's no proof whatsoever that it was ever even in
6 Taylor's possession. It was just found in his apartment.
7 Also, there's no proof whatever of this gun being used or
8 related or anything in connection with drugs. It was just a
9 pistol found in Taylor's apartment that we actually don't even
10 have in Taylor's control or possession. So we don't feel the
11 gun enhancement should apply, Your Honor.

12 And again, I think the Court has to look to whether
13 they believe Mr. Washington because that entire base level of
14 the drugs and everything greatly relies on his almost
15 uncorroborated testimony, even though they do have the text
16 messaging and the MoneyGrams.

17 **THE COURT:** All right. This matter is before the
18 Court on the objections to the presentence report lodged by the
19 defendant. I've considered the record in this case, the
20 presentence investigation report and addendum, and the record
21 here today. The Court must make findings by a preponderance of
22 the evidence with respect to the proper calculation of the
23 guidelines in this matter.

24 Here, much of the evidence is based upon the case
25 agent's investigation and the cooperation obtained from

1 Mr. Washington, who was the defendant's cousin. Of course, a
2 lot of that, or some of that, has been corroborated by other
3 means.

4 The evidence the Court finds to be credible and
5 supported by findings based upon the testimony in this case are
6 that the defendant was involved with Mr. Washington and
7 Mr. Taylor. There's been no showing that Mr. Washington was
8 lying or that he was otherwise not credible. Some of the
9 things he told the agents were corroborated by way of the
10 subpoenas to MoneyGram. Some of the transactions there matched
11 up. They matched up -- were able to corroborate the number of
12 trips. I think Mr. Washington said seven to eight, and the
13 agent testified they were able to corroborate seven of those
14 trips. And they were also able to corroborate contact between
15 -- provide evidence of contact between the co-conspirators,
16 Mr. Washington and Mr. Taylor, with the defendant based upon
17 phone numbers found in both of those individuals' phones and
18 on -- based upon the fact that he was labeled as "Cuz" in both
19 phones, and that was known to be one of his monikers.

20 Moreover, there's a text message that is from the
21 time of Mr. Washington's stop warning or advising "Cuz" that he
22 had been stopped and advising him to be aware of that.

23 So the credible testimony before the Court supports a
24 finding by a preponderance of the evidence that Mr. Washington
25 was being forthcoming and truthful with the agent, and the

1 agent gave no indication that he had any reason not to believe
2 anything Mr. Washington was telling him. So the Court finds
3 that evidence and testimony credible, and it guides the Court's
4 resolution of the legal questions regarding which enhancements
5 would properly apply.

6 The first matter is, of course, the doctrine of
7 relevant conduct. And under the doctrine of relevant conduct,
8 Section 1B1.3 of the guidelines, finds relevant conduct as, all
9 acts and omissions committed, aided, abetted, counseled,
10 commanded, induced, procured, or willfully caused by the
11 defendant; and, in the case of a jointly undertaken criminal
12 activity, a plan, scheme or enterprise, all acts and omissions
13 that were within the scope of the jointly undertaken criminal
14 activity, in furtherance of that activity, and reasonably
15 foreseeable in connection with that activity.

16 Of course, this is a Possession with Intent to
17 Distribute conviction. That was the count of conviction to
18 which the defendant plead guilty. So he acknowledged, at least
19 with respect to some of this behavior, that he was engaged in
20 possession with intent to distribute narcotics. And the record
21 supports the conclusion, and the Court so finds, that he was
22 involved in jointly undertaken criminal activity with
23 Mr. Washington and Mr. Taylor.

24 For conduct that constitute a common plan or scheme,
25 the conduct must be substantially connected by at least one

1 common factor, such as common victims, common accomplices,
2 common purpose, and a similar modus operandi.

3 Here, we have no victims, but we have common
4 accomplices, a common purpose, a similar modus operandi. As to
5 each of these incidents, the defendant was using
6 Mr. Washington as a courier to make routine and repeated trips
7 to transport drugs to Mr. Taylor. And when Mr. Washington was
8 not able to make the trips, Mr. Nelson made some himself and
9 delivered drugs to Mr. Taylor's apartment. That's where the
10 drugs were being distributed out of once they arrived, based
11 upon the items that were found as part of the search warrant,
12 the scales, I think there were cutting agents, I believe, were
13 found, and then the firearm, of course, as well. So,
14 obviously, that was where the drugs, once they were received,
15 were being prepared for distribution, if not actually being
16 distributed out of there.

17 The money was transported back by Mr. Washington or
18 sent via MoneyGram through these female intermediaries,
19 anywhere from two to four or five the evidence would support.
20 That was corroborated by the MoneyGram subpoena. So we do have
21 a common set of accomplices, a common purpose, to transport and
22 then distribute large quantities of drugs, and a similar modus
23 operandi. This was also the same course of conduct because the
24 different incidents were sufficiently connected or related to
25 each other to warrant a conclusion that they were part of a

1 single episode spree or ongoing series of offenses.

2 Here, the relevant factors that support this
3 conclusion that the conduct was highly similar to the offense
4 of conviction in the sense that what led, ultimately, to the
5 defendant's arrest was the stop of Mr. Washington while he was
6 in the course of transporting drugs. So they are all very
7 similar offenses or conduct. It was regular and repetitious,
8 and occurred over a relatively short period of time in 2017
9 based upon the evidence of record.

10 So for those reasons, the defendant is responsible
11 for acts and omissions of others; not just his own conduct, but
12 acts and omissions of others that were within the scope of this
13 jointly undertaken criminal activity, that were in furtherance
14 of this activity, and that were reasonably foreseeable to him
15 in connection with that activity, and that occurred during the
16 commission of the offense, in preparation for the offense, or
17 in the course of pursuing that offense.

18 So with respect to offenses of that nature involving
19 contraband, in the case of jointly undertaken activity, all
20 quantities that were involved in transactions carried out by
21 other participants that were within the scope of, in
22 furtherance of, or reasonably foreseeable to the defendant are
23 properly counted under the doctrine of relevant conduct, which
24 is not limited to the count of conviction.

25 So in this case, based upon the record, the Court is

1 of the view that the defendant is properly held accountable for
2 the conduct of his co-conspirators in this case, or
3 codefendants, Mr. Washington and Mr. Taylor.

4 For that reason, the Court is of the view that the
5 drug quantities themselves in this case were properly
6 calculated as set forth in the presentence report and in the
7 addendum. The defendant was held responsible for the heroin
8 that was seized which constitutes the count of conviction, and
9 for methamphetamine that was also seized in connection with
10 these related activity -- this related activity, and the drugs
11 that were supplied by Mr. Nelson to Taylor. The Court finds
12 those quantities are all properly calculated, and the base
13 offense level is correct based upon the evidence of record in
14 this case.

15 Turning to the objection regarding the importation of
16 the methamphetamine. The evidence is that given the purity
17 level of this methamphetamine, that it was imported. There are
18 no known labs in the United States within the knowledge of the
19 DEA. And this is what they do, they know this sort of thing,
20 that such drugs can be produced here in the United States. So
21 the methamphetamine in this case was imported, or the drugs
22 were imported, which supports the two-level enhancement under
23 Section 2D1.1(b) (5). And that's also corroborated by some of
24 the other evidence, the circumstances under which
25 Mr. Washington was having to return to Texas and to pick up the

1 drugs, and having, on one occasion, to wait for someone to
2 bring the drugs to the defendant in a parking lot, a Hispanic
3 individual. All of that taken together supports the conclusion
4 that the importation enhancement was appropriate in this case.

5 The next objection that the Court will address is the
6 firearm objection. In this case, the Court is of the view that
7 the addendum to the presentence report very thoroughly and
8 appropriately addresses this issue, and that the enhancement
9 applies whether or not the defendant actually knew that
10 Mr. Taylor actually possessed the firearm because it was
11 reasonably foreseeable to him that Taylor would possess a
12 firearm in connection with the drugs that Nelson was supplying.
13 This was regular activity, large quantities of drugs being
14 delivered and then distributed out of Mr. Taylor's apartment,
15 as evidenced by the other items that were seized at the time.
16 And when the firearm is possessed, and there's no evidence that
17 Mr. Taylor did not possess it, it is properly counted unless it
18 is clearly improbable that the weapon was connected to the
19 offense. There's been no showing that it's clearly improbable
20 that the weapon was connected.

21 There are certain cases which the probation office
22 has cited in the addendum, *U.S. versus Garza*, *U.S. v. Sparks*,
23 *U.S. v. Aguilera-Zapata*, which all speak to the question of
24 allowing a court or saying a district court can infer that a
25 defendant should've seen -- foreseen a codefendant's possession

1 of a weapon, such as a firearm, if the government shows that
2 another participant, in this case Mr. Taylor, possessed the
3 firearm in the course of committing the offense.

4 And furthermore, it was -- it is reasonably
5 foreseeable, according to the Fifth Circuit, that firearms are
6 employed as tools of the drug trafficking trade. So the Court
7 finds that that enhancement is also properly applied.

8 Finally, with respect to the leadership enhancement,
9 that pertains to Section 3B1.1 of the guidelines. Here, the
10 defendant was assessed a four-level enhancement under 3B1.1A,
11 which states that, if the defendant was an organizer or leader
12 of a criminal activity that involved five or more participants
13 and was otherwise extensive, increase by four levels.

14 Well, here the activity clearly involved five or more
15 participants: The defendant, Mr. Washington, Mr. Taylor, and
16 at least two, probably more females, who were helping with the
17 transfer of the money. All of those individuals would qualify
18 as participants because they would be criminally responsible in
19 some way for commission of the offense even if they have not
20 been convicted. Essentially, the other individuals were
21 engaging in money laundering to hide this conduct.

22 In order for the enhancement to apply, according to
23 the Application Note 2, the defendant must have been an
24 organizer, leader, manager or supervisor of one or more
25 participants. Here, the evidence easily supports the

1 conclusion that he supervised at least Mr. Washington, had him
2 running drugs for him. He was Mr. Nelson's courier, so he
3 supervised or controlled at least one other individual.

4 Section 3B1.1 also makes it clear in the application
5 notes that there can be more than one leader or organizer. So
6 if, in fact, Mr. Taylor was also a leader or organizer, that
7 does not prevent application of this enhancement because there
8 can be more than one.

9 The Court should look at a number of factors in
10 evaluating whether this enhancement applies, and those are set
11 forth in Application Note 4. They include the exercise of
12 decision-making authority, the nature of participation in the
13 commission of the offense, the recruitment of accomplices, the
14 claimed right to a larger share of the fruits of the crime, the
15 degree of participation and planning or organizing the offense,
16 the nature and scope of the activity, and the degree of control
17 and authority exercised over others.

18 Here, the defendant clearly exercised some
19 decision-making authority in terms of the manner in which the
20 drugs would be transported and distributed. He was heavily
21 involved in committing the offense. He recruited, or certainly
22 had control or authority over, Mr. Washington and had him doing
23 the transporting, most of the transporting for him. He was
24 involved in planning and organizing the offense, and the scope
25 of it was significant, involved a number of individuals over a

1 period of time and large quantities of drugs.

2 So based on all of that, the Court is of the view
3 that the sentencing guidelines as set forth in the presentence
4 report are properly calculated. The defendant's objections are
5 overruled.

6 I would further note that in the addendum the
7 probation office removed acceptance of responsibility from the
8 defendant because the Court finds and agrees that the
9 defendant, although he did plead guilty, has frivolously denied
10 relevant conduct, particularly his connection with
11 Mr. Washington and Mr. Taylor. That is conduct inconsistent
12 with acceptance of responsibility, and the Court finds that the
13 three-level reduction was appropriately withheld.

14 So based on all of that, the guideline computations
15 would be as follows: The offense level would be a 43. The
16 criminal history category is a four. The guideline range would
17 be life in prison; however, based upon the count of conviction,
18 there is a statutory cap of 240 months, therefore the guideline
19 range is 240 months. Supervised release range is three years.
20 The defendant is not eligible for probation. Fine range is
21 \$50,000 to \$1 million. Community restitution is applicable.
22 And there's a \$100 special assessment.

23 Do the parties agree that those are the correct
24 guideline computations?

25 **MS. VAN BUSKIRK:** Yes, Your Honor.

1 **MR. DAVIS:** Yes, Your Honor.

2 **THE COURT:** Based on the Court's rulings. The Court
3 agrees and will adopt those as the guideline computations in
4 this matter.

5 The Court will also adopt the presentence report and
6 addendum as the Court's findings of fact subject to the
7 additional findings made here today.

8 I would also observe, just for purposes of the
9 record, that even if the Court had sustained all of the
10 objections, of course except for the drug quantity calculation,
11 the defendant would've been still at an offense level of 38
12 with a history of four, he still would've been over 20 years on
13 the guideline range. And even if he had received acceptance of
14 responsibility, that would've knocked him down to a 35 and a
15 four. The bottom of his guideline range would be 235 months,
16 five months below the statutory cap.

17 So for the record, the Court has addressed the
18 objections. With the exception of the drug quantity
19 calculation, I'm not sure how much the rest of them really
20 affected the guidelines in the sense that he would still have
21 been at or over the statutory cap.

22 At this time, Mr. Nelson, you have what's known as
23 the right of allocution. That's your opportunity to address
24 the Court and say anything you would like to say on your own
25 behalf before the Court imposes a sentence. You may address

1 the Court yourself if you wish. If you would rather your
2 attorney speak for you, that's fine, too. It is your choice.
3 But either way, I'm going to ask you both to come up -- all
4 three of you to come up here to the podium. And if you do
5 choose to speak, I remind you that you are under oath. So if
6 there's anything you would like to say, I'll hear from you at
7 this time, sir.

8 **DEFENDANT:** I would just like to apologize to the
9 Court, Your Honor, and to my family, and just ask that you have
10 mercy on me.

11 **THE COURT:** All right. Anything else, Counsel? Mr.
12 Davis? Mr. Barnett?

13 **MR. DAVIS:** I don't know if Mr. -- I have nothing
14 else to say, Your Honor.

15 **THE COURT:** Mr. Barnett?

16 **MR. BARNETT:** Nothing, Your Honor.

17 **THE COURT:** Anything else from the government?

18 **MS. VAN BUSKIRK:** No, Your Honor.

19 **THE COURT:** I believe the government had agreed to
20 recommend a sentence in the lower 50 percent; is that right?

21 **MS. VAN BUSKIRK:** That is correct, Your Honor.

22 **THE COURT:** Does the government so recommend?

23 **MS. VAN BUSKIRK:** Yes, Your Honor.

24 **THE COURT:** Of course, for the record, that
25 recommendation is moot because the guideline range is 240

1 months, but I will accept it for purposes of the record.

2 One other thing I need to explain to you, Mr. Nelson,
3 is that as part of your plea agreement in this case you waive
4 the right to appeal your conviction and your sentence. If for
5 some reason you decided that you wanted to try to appeal
6 anyway, you can ask your attorneys to file a notice of appeal
7 for you. If for some reason they cannot or will not, you can
8 file it yourself. All you have to do is write on a piece of
9 paper that you wish to appeal, sign it, and mail it in to the
10 clerk of court. But you only have 14 days to do that from the
11 date I enter a written judgment in your case. Do you
12 understand that?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** Also, if for some reason you could not
15 afford to pay the costs of an appeal, you can request
16 permission to proceed on appeal without the payment of costs,
17 but, again, you have to put that request in writing and send it
18 in to the clerk of court. Do you understand that?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** This matter, then, is before the Court
21 for sentencing. In this case, I've considered the record in
22 this matter, the presentence investigation report, and the
23 advisory sentencing guideline computations, and the record of
24 this proceeding here today. I must also take into account the
25 relevant statutory sentencing factors set forth by Congress at

1 Title 18, United States Code, Section 3553. And in this case,
2 I find the following factors are relevant: The nature and
3 circumstances of the offense, and the history and
4 characteristics of the defendant.

5 This was a serious and significant offense involving
6 the transportation and distribution of large quantities of
7 drugs to this area over an extended period of time. The
8 defendant was in a criminal history category of a four, and was
9 on parole at the time of the offense. He was an organizer and
10 leader of this offense, and so that is significant in the
11 Court's view. This is a serious offense. As the Court stated,
12 it occurred repeatedly over a period of time, involved a number
13 of individuals, efforts to conceal the money, and involved
14 drugs that had been imported and then shipped across state
15 lines.

16 The sentence needs to promote respect for the law.
17 The defendant's criminal history and conduct in this case show
18 a lack of respect for the law. And it needs to afford a just
19 punishment, one that is sufficient but not greater than
20 necessary to accomplish the goals of sentencing.

21 In this case, the Court would observe that Mr. Nelson
22 has benefited significantly from the plea agreement in this
23 case for being allowed to plea to the count of conviction,
24 Count 2. And his counsel certainly did a fine job of
25 representing him in that regard to negotiate that plea. Were

1 it not for the agreement they worked out for him, he would be
2 potentially looking at life in prison, but instead he is facing
3 a maximum exposure of 240 months. So that is a significant
4 limitation on his sentencing exposure based upon the plea
5 agreement.

6 The sentence needs to afford adequate deterrence to
7 criminal conduct. Mr. Nelson has not been deterred from
8 engaging in this type of behavior, and he needs to be deterred,
9 but it also needs to deter others who may be inclined to engage
10 in this behavior. It needs to protect the public from further
11 crimes of this defendant. This type of conduct is a threat to
12 public health and safety. The distribution of these drugs is
13 dangerous and presents a threat to public safety.

14 Further, the defendant is in need of correctional
15 treatment in the most effective manner. He has some documented
16 substance abuse issues with marijuana, opiates and PCP. The
17 Court will attempt to fashion some conditions that will
18 hopefully assist him in dealing with those substance abuse
19 problems.

20 So based on all of that, the Court will impose
21 sentence as follows: Having considered the advisory sentencing
22 guideline calculations and the other sentencing factors found
23 at Title 18, United States Code, Section 3553(a), it is the
24 judgment of the Court that the defendant, Ambrose DeJuan
25 Nelson, is hereby committed to the custody of the Bureau of

1 Prisons for a term of 240 months as to Count 2 of the
2 indictment. The Court is of the view this is an appropriate
3 sentence based upon the guideline range in this case and based
4 upon the 3553 factors as the Court has discussed them here
5 today.

6 It is further ordered that the defendant pay a fine
7 of \$25,000 to the United States, which is payable immediately
8 and during the term of incarceration. The fine is a departure
9 below the guideline range. It's based upon the defendant's
10 ability to pay. Given the length of time he will be
11 incarcerated, he will have the ability to work some of the fine
12 off. This will help defray some of the costs of incarceration,
13 and will also serve as an incentive to obtain employment and
14 remain employed once he is on supervised release, affording
15 probation an additional tool for supervising him.

16 Upon release from custody, any unpaid balance on the
17 fine shall be paid at a rate of \$150 per month beginning 30
18 days after release from confinement. The Court finds that the
19 defendant does not have the ability to pay interest on the
20 fine. The Court will waive the interest requirement in this
21 case. In the event the full amount is not paid in full prior
22 to the termination of supervised release, the defendant is
23 ordered to enter into a written agreement with the Financial
24 Litigation Unit of the U.S. Attorney's Office for payment of
25 the remaining balance.

1 In addition, the value of any future discovered
2 assets may be applied to offset the criminal monetary
3 penalties. The defendant may be included in the Treasury
4 Offset Program, allowing qualified federal benefits to be
5 applied to offset the balance of criminal -- to offset the
6 balance of criminal monetary penalties.

7 Upon release from imprisonment, the defendant shall
8 be placed on supervised release for a term of three years as to
9 Count 2 of the indictment. Within 72 hours of release from the
10 custody of the Bureau of Prisons, the defendant shall report in
11 person to the Probation Office in the district to which he is
12 released.

13 The Court is of the view that a three-year term of
14 supervised release is appropriate in this case given the nature
15 and circumstances of this offense, and the history and conduct
16 of the defendant, and his criminal history, to maximize a
17 period of time over which probation can supervise the
18 defendant, to facilitate his successful rehabilitation and
19 reintegration into society, and to ensure that he does not
20 recidivate.

21 While on supervised release, the defendant shall
22 comply with the mandatory and standard conditions which are
23 listed on the judgment and commitment order, and he shall not
24 possess a firearm. In addition, the following special
25 conditions are imposed:

1 Number one, the defendant shall provide the probation
2 office with access to any requested financial information.

3 Number two, the defendant shall not incur new credit
4 charges or open additional lines of credit without the approval
5 of the probation office unless the defendant is in compliance
6 with the installment payment schedule.

7 These two conditions are imposed in light of the fine
8 imposed in this case, to ensure the defendant remains in
9 compliance with that provision of the sentence, and to
10 facilitate probation office supervision regarding the same.

11 Number three, the defendant shall participate in a
12 program of testing and/or treatment for drug abuse as directed
13 by the probation office. If enrolled in a drug treatment
14 program, the defendant shall abstain from consuming alcoholic
15 beverages during treatment, and shall continue abstaining for
16 the remaining period of supervision. The defendant shall
17 contribute to the cost of the treatment in accordance with the
18 probation office co-payment policy.

19 Number four, the defendant shall not possess, ingest
20 or otherwise use a synthetic cannabinoid or other synthetic
21 narcotic unless prescribed by a licensed medical practitioner
22 for a legitimate medical purpose.

23 Number five, in the event the defendant resides in or
24 visits a jurisdiction where marijuana or marijuana products
25 have been approved, legalized or decriminalized, the defendant

1 shall not possess, ingest or otherwise use marijuana or
2 marijuana products unless prescribed by a licensed medical
3 practitioner for a legitimate medical purpose.

4 These three conditions are imposed in light of the
5 documented issues the defendant has had with substance abuse,
6 particularly marijuana, PCP and opiates, as set forth in the
7 presentence report. Hopefully, these conditions will afford
8 him some assistance in dealing with that issue and assist him
9 in reintegrating into society and rehabilitating.

10 Further, because synthetic cannabinoids and synthetic
11 narcotics are often used as substitutes for marijuana, the
12 prohibition on their use is also included.

13 Number six, the defendant shall submit his person,
14 property, house, residence, vehicle, papers, electronic
15 communication devices or office to a search conducted by a
16 United States Probation Officer. Failure to submit to a search
17 may be grounds for revocation of release. The defendant shall
18 warn any other occupants that the premises may be subject to
19 searches pursuant to this condition. An officer may conduct a
20 search pursuant to this condition only when reasonable
21 suspicion exists that the defendant has violated a condition of
22 his supervision and that the areas to be searched contained
23 evidence of this violation. Any search must be conducted at a
24 reasonable time and in a reasonable manner.

25 This condition is imposed in light of the nature and

1 circumstances and facts surrounding this case, the defendant's
2 criminal history, and pattern of conduct. The Court is of the
3 view that this condition will assist probation in ensuring the
4 defendant does not recidivate while he is on supervision.

5 The Court recognizes that community restitution is
6 applicable; however, the Court will not order community
7 restitution based upon the defendant's inability to pay in
8 light of the fine imposed in this case.

9 It is further ordered that the defendant pay a
10 mandatory special assessment of \$100, which is due immediately.

11 Further, pursuant to Title 21, United States Code,
12 Section 862, the defendant shall be deemed ineligible for any
13 and all federal benefits for a period of one year. The Court
14 recommends that the defendant be allowed to participate in any
15 substance abuse treatment programs for which he may be eligible
16 while in the custody of the Bureau of Prisons.

17 The Court further recommends that he be housed in a
18 facility closest to his home for which he is eligible to
19 facilitate family visitation.

20 The defendant is remanded to the custody of the U.S.
21 Marshals Service to await designation by the Bureau of Prisons.
22 That will be the judgment of the Court. Anything further?

23 **MS. VAN BUSKIRK:** Pursuant to the plea agreement, the
24 government moves to dismiss Count 1 of the indictment.

25 **THE COURT:** That motion will be granted. Anything

1 else?

2 **MS. VAN BUSKIRK:** Nothing.

3 **MR. DAVIS:** Nothing from the defendant, Your Honor.

4 **THE COURT:** Defendant is remanded to custody.

5 Counsel, you are excused.

6 (HEARING CONCLUDED)

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2 CERTIFICATE OF COURT REPORTER

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4 I, Sherri L. Penny, RPR, Official Court Reporter for
5 the United States District Court for the Southern District of
6 Mississippi, appointed pursuant to the provisions of Title 28,
7 United States Code, Section 753, do hereby certify that the
8 foregoing is a correct transcript of the proceedings audio
9 recorded and transcribed by me using the audio recording made
10 in this matter, and that same is a true and correct transcript
11 to the best of my ability and understanding. Any inaudibles
12 that occur in the transcript are a result of the poor recording
13 quality of the audio.

14 I further certify that the transcript fees and format
15 comply with those prescribed by the Court and the Judicial
16 Conference of the United States.

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18

19

20 S/ Sherri L. Penny

21 Sherri L. Penny, RPR, FCRR
OFFICIAL COURT REPORTER

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